In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 125

GEORGE BROOKS ET AL, PETITIONERS

v.

THE UNITED STATES OF AMERICA, EX REL. DAVID BAYARSKY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This action was originally commenced against petitioners by a *qui tam* plaintiff under the provisions of Section 3490–3493 and 5438 of the Revised Statutes, prior to the Act of December 23, 1943 (57 Stat. 608), which amended Section 3491 of the Revised Statutes.

Pursuant to clause (D) of Section 3491, Revised Statutes, as amended by the 1943 Act, the United States thereafter entered its appearance, and undertook to proceed against the defendants on the merits. The defendants sought dismissal of the action on the ground that the complaint

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filed by the *qui tam* plaintiff was based upon evidence or information in the possession of the United States prior to the bringing of the action. The District Court's order abating the suit on that ground was reversed by the court below.

The sole question here presented is whether the United States, after taking over a *qui tam* action not commenced on original information under the authority of Clause (D) of the amendatory act, may proceed against the defendants to that action on the merits. This was precisely the issue involved in *United States* v. *Pittman,* 151 F. 2d 851, in which the Fifth Circuit reached the same conclusion as did the court below, and in which this Court denied certiorari on May 13, 1946, No. 1035, October Term, 1945.

Petitioners' contentions are not different in nature from those advanced in the *Pittman* case, and no additional reasons of substance are suggested calling for further review herein. For the reasons set forth in the brief in opposition filed by the United States in that case, it is respectfully submitted that the petition herein should similarly be denied.

J. HOWARD MCGRATH,
Solicitor General.

JULY 1946.

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